Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. ----71-167

ST. PAUL AT CHASE CORPORATION,
A MARYLAND CORPORATION,
Petitioner,

v.

MANUFACTURERS LIFE INSURANCE COMPANY OF TORONTO, A CANADIAN CORPORATION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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St. Paul at Chase Corporation prays that a writ of certiorari issue to review the judgment of the Court of Appeals of Maryland, entered in the above entitled case on May 17, 1971.[1]

[1] The subject case in the court below is entitled St. Paul at Chase Corporation and Charles W. Williams, Appellants and Cross Appellees v. Manufacturers Life Insurance Company of Toronto and Weaver Brothers, Inc. of Maryland, Appellees and Cross Appellants.

CITATIONS TO OPINIONS BELOW

The complete record of the subject case is submitted herewith. While the opinion of the Court of Appeals of Maryland is reported in 278 A. 2d 12 (1971), for the convenience of the Court, it is printed in the Appendix filed under separate cover. Likewise your Petitioner's Motions for a rehearing filed May 25, 1971, and again June 14, 1971, which were denied, together with Motion to Stay Mandate also filed June 14, 1971, which was granted, are printed in the Appendix pps. 57a, 67a, 81a, respectively. The orders of the court below relative to the above Motions are printed in the Appendix, p. 86a.

JURISDICTION

The judgment of the Court of Appeals of Maryland was filed May 17, 1971. On June 1, and again on June 25, rehearing was denied. On June 24, an order was issued staying the mandate pending the filing of a Petition to this Court, and a final determination of the issues involved. The jurisdiction of this Court is invoked under 28 U.S.C., *Sec. 1254*, and under the provisions of Rule 23.

QUESTIONS PRESENTED

1. Is not a decision of a State Court that would adversely affect the flow of capital into the development and construction industry a matter of such national importance that it is deserving of the attention of this Court?

2. In the context of the mortgage financing and construction industries, where a proposed permanent mortgagee has breached its contract and refused to go forward with its commitment to advance the mortgage money after the developer, in reliance on the commitment, has spent huge sums and completed the project, are damages to be measured by:

a) establishing a "fair market value" of the building as of the date of the breach, based on adverse transitory economic conditions existing at that time which were not foreseeable at the date of contracting and then by using the "fair market value" so established and deducting the amount of the proposed mortgage thus calculating the developer's resultant equity, or lack of it, in the project?

Or as urged by Petitioner are damages to be measured by:

b) the values that formed the basis of the contract at the time the contract was made?

3. In a breach of contract action, does not an imposed "fair market value" as of the date of the breach, different from the values that had been agreed to by the contracting parties at time of contracting, amount to a taking of property without due process of law in violation of the 14th Amendment of the Constitution of the United States and of Art. 23 of the Bill of Rights of the Constitution of Maryland, especially where the "fair market value" assigned to the project as of date of breach is based upon economic conditions and circumstances that were not contemplated or foreseeable at the time the contract was made?

STATUTES INVOLVED

The statutory provisions involved are the 14th Amendment of the Constitution of the United States, Sec. 1, which states that: ". . . nor shall any State deprive any person of life, liberty, or property without due process of law"; and Art. 23 of the Bill of Rights of The Constitution of Maryland which similarly states. "That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land".

In addition, there is involved the rule of *Hadley v. Baxendale*, 1854, 9 Exch., 341 (Eng.) dealing with damages in a breach of contract action, which case has been universally adopted and forms the Law of the land.

STATEMENT

St. Paul at Chase Corporation (St. Paul) was the owner and developer of a 22-story apartment building. Manufacturers Life Insurance Company of Toronto (Manufacturers), as a proposed long term mortgagee, after careful analysis of the project and its costs, placed a value of $7,920,000 on the building and land when completed, and an economic value on the project of $7,265,000. These values were furnished to St. Paul in a writing by Manufacturers' agent and were accepted by St. Paul. Based on these agreed upon values carefully determined by Manufacturers, Manufacturers contracted to give St. Paul a $4,800,000 mortgage (66% of Manufacturers' economic value of the project), repayable over 26 years at 6¼%. Chemical Bank New York Trust Company (Chemical) in reliance on Manufacturers' values, agreed to lend St. Paul $4.8 million with which to construct the building and entered into a buy-sell agreement with Manufacturers, under which Manufacturers agreed to buy and Chemical to sell, St. Paul's note and deed of trust, on completion of construction. St. Paul, in reliance upon the values Manufacturers placed on the building and land and the use of it, assumed enormous financial obligations to the construction lender and others and invested substantial additional monies in the project. On March 7, 1966, the scheduled day for consummation of Manufacturers' agreement, Manufacturers refused to go forward (A15a). As a result, the construction lender, Chemical foreclosed, acquired the building and obtain a $1.3 million deficiency decree against

St. Paul. The trial court and the Maryland Court of Appeals found that Manufacturers wrongfully breached its contract with St. Paul and with Chemical, and that this breach resulted in the loss of St. Paul's building and project (A38a).

In determining St. Paul's damages for having been wrongfully deprived of its building, the court below, the Court of Appeals of Maryland, totally contrary to the celebrated case of *Hadley v. Baxendale,* 1854, 9 Exch. 341 (Eng.) which has been applied in nearly every jurisdiction in the United States, but not in the context of the national mortgage lending industry, held that St. Paul was only entitled to whatever its equity was in the building on the date of breach, March 7, 1966 (A47a). In determining St. Paul's equity, the trial court and the Court below relied upon the testimony of the Defendants' hired appraisers who determined what they believed the "fair market value" for the building was under economic conditions and circumstances existing in Baltimore, Maryland, on the date of the breach. The trial court placed a "fair market value" of about $4.5 million on the building and concluded that since a $4.8 million mortgage was proposed, St. Paul had no equity and therefore lost nothing by having lost its building and project. The court below upheld this opinion of the trial court and merely awarded St. Paul monies that St. Paul owed to only certain of its creditors including Chemical. This award amounted to approximately $2,250,000. Nothing was allowed to St. Paul for the loss of its building and land, for the loss of the use of it, or for the enormous amount of time, effort, and monies invested in the project by St. Paul.

In finding that the 238 room, 22-story apartment building was valueless on the date of the breach, the Court below ignored the value of the building and land, and its

use, that had been established by Manufacturers and that formed the essence of the contract between St. Paul and Manufacturers, and instead placed a new value, determined under different economic conditions and circumstances which were not foreseeable nor contemplated at the time of contracting.

REASONS FOR GRANTING WRIT

1. THE DECISION OF THE COURT BELOW WILL CREATE CHAOS IN THE NATIONAL MORTGAGE INDUSTRY AND WILL ADVERSELY AFFECT THE FLOW OF MONEY INTO THE CONSTRUCTION INDUSTRY.

The decision of the court below, holding that damages in a breach of contract action are to be determined as of the date of the breach, invokes a Federal issue of paramount national importance. It directly and adversely affects the entire development and mortgage industry of the country. Today, with the emphasis on new construction, especially construction of large housing developments, considered by the Federal Government to be essential to national recovery, and for adequate housing for all of the people of the country, the sanctity of a mortgage commitment must be protected. All large developments are financed by a construction loan made against a long term mortgage commitment. In all financing of this type it is provided that the long term mortgagee under a buy-sell agreement with the construction lender, purchase the mortgage or deed of trust securing the construction loan, on completion of construction, provided only the project be built to the plans and specifications approved by the long term mortgagee and that the project be completed within the commitment period. If a long term mortgagee may take a second look at its commitment after a developer and construction lender has spent huge sums in reliance on it, and may then cancel its commitment as

was done in the instant case, then no developer or construction lender can in the future embark with any safety on the construction programs so necessary to the country. Should they elect to take this risk then it can be anticipated that their prices will reflect the risk, thereby further adding to present spiralling construction and development costs.

A long term mortgage cannot be accepted if it is made dependent on market fluctuations, or on conditions that might prevail at the time of completion of construction, some time in the future, which might be different from those at the time the contract was entered into. Once given, accepted, and relied upon, the commitment of a long term mortgagee must be held secure. If it is cancelled at the last minute and the mortgagor is unable to refinance and loses everything, the breaching mortgagee must be made to pay as damages the values that he had placed on the project when the developer accepted the commitment and proceeded to spend vast sums in reliance on its contract and those values. Only in this way can the injured mortgagor be made whole. Only in this way can a mortgagee be deterred from breaching his contract whenever he feels it to his advantage to do so.

Today, with the tremendous construction contracts that will be forthcoming if the Government's plans are met, it is essential that this Court reverse the ruling of the court below. Otherwise that opinion would be used to justify similar action on the part of other mortgagees, who, like Manufacturers, might find it advantageous to them to cancel their commitment and breach their contracts after a developer had completed the project. This would bring chaos to the development and mortgage industry.

2. THE DECISION OF THE COURT BELOW IS IN CONFLICT WITH THE RULE OF *HADLEY v. BAXENDALE*, 1854, 9 Exch. 341 (Eng.) WHICH CASE HAS BEEN UNIVERSALLY ADOPTED AND FORMS THE LAW OF THE LAND.

The court below recognized *Hadley* (A43a), but then rendered it meaningless. The ruling of that case was laid down by Baron Alderson to protect both parties to a contract, to establish the exposure and liability of the breaching party, and the rights of the injured party. Under that rule the liability of the breaching party would be limited to the values of the contract agreed upon even though at date of breach, the values might be higher. The injured party could not demand damages greater than the values that had been agreed upon. For the same reason, should there be a market recession at the time of the breach the injured party is entitled as damages to the values that were in the contemplation of the parties at the time the contract was made, i.e., to those values which formed the basis of the contract, should the contract be breached.

In clear and unequivocal terms Baron Alderson stated:

> ". . . where two parties have made a contract which one of them has broken the damages which the other party ought to receive in respect of such breach of contract should be, either such as may fairly and substantially be considered as arising naturally, i.e., according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of the breach of it . . ."

That the meaning of the word "damages" when used in plural form, as used by Baron Alderson, is still the meaning of that word today and does not refer to the elements making up the damage, but means the amount of

monies to be awarded, is shown in Black's Law Dictionary (4th Edition). There damages (in the plural) is defined as:

> "A pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another". (Citations omitted).

On the other hand, Black's Law Dictionary (4th Edition), defines damage (in singular form) as:

> "Loss, injury, or deterioration caused by the negligence, design, or accident of one person to another in respect of the latter's person or property. The word is to be distinguished from its plural — 'damages' — which means a compensation in money for a loss or damage". (Citations omitted).

In many cases it could be difficult for a jury to determine what "damages" were in the contemplation of the parties at the time they entered into their contract, what values they had assigned to the contract at that time. In the subject case there is no difficulty. The parties had agreed to the values of the building and land, and of its use (A43a). These values had been reduced to a writing and had been furnished to St. Paul and were part of the evidence of the case. Likewise, in cases of partial loss it might be difficult for a jury to determine the amount of the loss. In the subject case the loss was not partial, it was complete.

The court below divorced the subject of the contract, St. Paul's building, from the value of the building. It held that the parties contemplated that should the contract be breached, St. Paul would lose its building, but ignored the value of the building and land and the use of it that had been agreed upon. The building and land, and its

use, cannot be separated from its value. One cannot be considered without the other, when the building and land, and its use, forms the security of a mortgage. The court below not only ignored these values, but referred to them in its opinion as "tentative" values (A47a). It would be difficult indeed, to imagine an insurance company giving a $4,800,000 mortgage commitment on "tentative" values, or giving a commitment subject to the appraised value of the property as of the date of completion, unless that insurance company from the beginning had its fingers crossed and fraudulently intended to cancel its commitment after the developer spent vast sums in reliance on it, should it then feel it was to its advantage to do so.

In the context of the construction and mortgage industry so vital to the well being of the country, a rule of a State Court cannot be allowed to negate the established rule of *Hadley v. Baxendale, supra,* as to the measure of damages in a breach of contract action which would adversely affect the economy of the country due to reliance other mortgages would place on the decision. The rule of the court below not only negates the rules of Hadley, but also negates established rules that hold that a court cannot change the terms or values inherent in a contract. To allow the decision of the court below to stand would destroy those rules of contract and breach of contract that have stood the test of time for over 100 years and that today forms the law of our country.

3. AN ARBITRARY "FAIR MARKET VALUE" AS A MEASURE OF DAMAGES IN A BREACH OF CONTRACT ACTION IS A TAKING OF PROPERTY WITHOUT DUE PROCESS OF LAW.

A "fair market value" as of the date of the breach cannot be used in a breach of contract action to determine the damages to which the injured party is entitled, especially when

the parties to the contract had carefully determined the value of the property prior to entering into their contract. A "fair market value" as of the date of the taking is appropriate in condemnation cases. A "fair market value" as of the date of the wrong is appropriate in tort actions. A "fair market value" as of the date of the trial is appropriate in actions of "trover". A "fair market value" as of the date of a breach cannot be the determining factor in breach of contract actions, unless the contract so provided, for the simple reason that the parties had not so contracted. The determining factor must be the values that had been agreed upon at the time the contract was entered into, and which formed the basis of the contract. The transitory values at the date of the breach might be greater or less than values that formed the basis of the contract.

To arbitrarily hold that a mortgagor injured by a breach of contract must accept a "fair market value" for his property as of the date of the breach amounts to a taking of his property without due process of law, contrary to the provisions of the 14th Amendment of the Constitution of the United States and of Art. 23 of the Bill of Rights of the Constitution of Maryland, and cannot be sanctioned or tolerated. There is no Maryland statute and no Federal statute giving a court a right to force an injured party to accept a "fair market value" for his property as a measure of damages in a breach of contract action.

Your Petitioner unsuccessfully raised this issue in its Brief, during the trial below and in the Motions for Rehearing (A65a). This point was not answered by the court below. This Court is therefore respectfully requested to review the decision of the court below as to this vital issue.

Not only is the right of a court to set an arbitrary "fair market value" as of the date of the breach as a standard

to be used in determining damages in a breach of contract action an important Constitutional question, but the ruling of the court below as to this is of utmost importance to the mortgage industry and hence to the country at large.

Under the ruling of the court below, a mortgagee desiring to cancel a mortgage commitment or to cancel a mortgage could select a time when it is most advantageous to him and most disastrous to the mortgagor. If the mortgagee selected a time to breach his contract when there was a depression or even a temporary market recession, as was done in the subject case, he could bring in appraisers to show that the property at that particular time, under adverse economic conditions, was not worth the amount of the mortgage. The mortgagee could then cancel its contract with impunity, and with no redress to the injured mortgagor. During such periods it would be difficult and in many cases impossible for the mortgagor to arrange refinancing, as in the subject case. With a depression or recession, interest rates would increase. The mortgagee could then use his money to greater advantage elsewhere, leaving the mortgagor destitute, as was the case of St. Paul. During such a period the mortgagee could foreclose and buy in the mortgaged property at a price less than the amount of the mortgage. From the income of the property it could then gain a higher return than from the interest on the mortgage, and at the end of the depression or recession sell the property at a capital gain. Having bought in the property for less than the amount of the mortgage the mortgagee then could obtain a deficiency decree against the mortgagor, and should the mortgagor ever get back on his feet obtain an additional profit. The above is not fanciful for it is exactly what did happen in the subject case, except it was the construction loan mortgagee who foreclosed as a result of Manu-

facturers' breach, bought in the property for less than the mortgage, reportedly sold it at a profit, and obtained a deficiency decree.

The ruling of the court below, if allowed to stand, would destroy the sanctity of mortgage contracts. It would open wide the doors to all manner of fraudulent practices. It would adversely affect the development and mortgage industry, and it would adversely effect the economic recovery of the country.

4. THE EQUITIES

The equities alone of this case would demand that St. Paul be awarded full compensatory damages. As brought out at the trial, three years were spent in the preparation of plans and in acquiring options on the needed land. Another three years were spent in arranging financing and in constructing the building, in furnishing model apartments, in advertising and having the building ready and open for occupancy. An enormous amount of time, effort, and money was invested in the project. These expenses were included in the value of the completed building by Manufacturers and by St. Paul and are part of the damages demanded by St. Paul. St. Paul met all of its obligations. Knowing that St. Paul had placed their full confidence in them and were relying on them, knowing full well what the end result would be (A46a), that St. Paul would lose everything, Manufacturers for its own selfish reasons callously and wantonly cancelled its commitment and breached its contracts. There was a temporary highrise market recession in Baltimore. The shadow of spiraling interest rates was commencing to fall across the land. Manufacturers could use its money to better advantage elsewhere. In the words of the trial court in

its Findings of Facts and Conclusions of Law issued at the end of the hearing on liability:

> "I am persuaded beyond any doubt that the reason for the cancellation of this contract was, first, a calculated risk taken by Manufacturers that if it didn't accept the roll over, and if the construction mortgage were foreclosed, and if Manufacturers were sued, that it could weather the storm, either by avoiding liability completely, or if subjected to liability, by minimizing damages. They took that calculated risk, and they're stuck with the result". (A37a).

However, the trial court and the court below then awarded no damages to St. Paul for the loss of its building and land, for the loss of its use, or for the enormous amount of time, effort, and monies expended. Except for having to pay certain consequential damages, Manufacturers' "calculated risk" has so far paid off.

CONCLUSION

For the foregoing reasons, this Petition for a writ of certiorari should be granted.

Respectfully submitted,

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